S.B.CIVIL WRIT PETITION NO.677/2003

Prakash Kumar Chanwariya
v.
Municipal Board, Sumerpur

DATE OF ORDER :: 29th March, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Sangeet Lodha, for the petitioner.
Mr. Yashwant Mehta, for the respondent.

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Since 12.10.1988 the petitioner is holding the post of Cleaner in substantive capacity with respondent Municipal Board, Sumerpur. A Cleaner working with a Municipal Board is having an avenue for promotion to the post of Driver in accordance with the Rajasthan Municipal (Subordinate and Ministerial Service) Rules, 1963 (hereinafter referred to as “the Rules of 1963”).

Under the Rules of 1963, recruitment to the post of Driver is required to be made by way of direct recruitment and by way of promotion with the ratio of 1:1. By virtue of Rule 10 of the Rules of 1963 the Executive Officer of a Municipal Board at the commencement of each year is required to determine number of anticipating vacancies during the course of the year and number of persons likely to be recruited. The procedure that is to be adhered while making promotions to the posts under the Rules of 1963 is given in Part-V and the eligibility to be considered

for promotion to the post of Driver as prescribed in the schedule appended wit the Rules of 1963 is as follows:-

Drivers(Motor Vehicles)	Holding driver licence under the Motor Vehicles Act.	Cleaner	3 yrs.exp. & also holding driver's licence under the motor vehicle Act.

The grievance of the petitioner is that though adequate number of vacancies pertaining to the post of Driver are available with the respondents but no recruitment by way of promotion is made. According to the petitioner he is eligible to be considered for promotion as Driver since 1991 and the respondent has atleast seven vacancies and out of those four are held by direct recruits and the remaining are lying vacant. A direction, therefore, is sought for the respondent Board to consider candidature of the petitioner for promotion to the post of Driver and further to promote him as such with all consequential benefits.

During the pendency of the petition for writ the respondent Board by its various communication, those are available on record as Anxs.A/1, A/2, A/3 and A/4, demanded three drivers to be absorbed in its service against existing vacancies. On basis of the documents referred above it is asserted by counsel for the petitioner that beside the vacancies existing earlier the Board is now having three more vacancies

and those vacancies are required to be filled in by way of promotion as all existing occupiers of the post of Driver were recruited under the direct recruitment quota.

In reply to the writ petition the case of the respondent is that no vacant post of Driver is available with them as all existing posts are occupied by the persons appointed in accordance with the Rules of 1963. The fact about availability of three vacancies as mentioned above is not denied by the respondent. It is also not denied that no appointment is given as Driver by way of promotion.

Heard counsel for the parties.

There is no dispute between the parties with regard to legal position pertaining to the eligibility, criteria and quota for making recruitment to the post of Driver under the Rules of 1963. It is also not in dispute that the petitioner is eligible to be considered for recruitment to the post of Driver by way of promotion. The respondent Board has also not denied that no appointment to the post of Driver has been made by way of promotion.

As stated in preceding paras, 50% of the total vacancies pertaining to the post of Driver are required to be filled in by way of promotion from

among the Cleaners having three years experience and also a licence under the Motor Vehicles Act.

To execute recruitment, the Executive Officer of the respondent Board, under the Rules of 1963, is under a statutory obligation to determine year wise anticipating vacancies. From the pleadings it does not reveal that the respondent Board ever determined the vacancies in accordance with Rule 10 of the Rules of 1963. What it appears is that the respondent Board is making appointment to the post of Driver by regularising services of adhoc appointees though no such procedure for recruitment is prescribed under the Rules of 1963. Be that as it may, the respondent Board by the force of the Rules of 1963 is required to maintain the ratio of 1:1 among the direct recruits and promotees while making appointment to the post of Driver. The appointments made by the respondent Board to the post of Driver are against the vacancies relating to direct recruitment and appointment by way of promotion is yet to be made.

A right to be considered for promotion to the post of Driver accrued in favour of the petitioner in the month of October, 1991 on completion of three years of service. Relevant to note here that at that time too the petitioner was having a valid licence under the Motor Vehicles Act. The respondent Board was required to consider candidature of the petitioner for

promotion against then existing vacancies pertaining to the post of Driver, but no such exercise has been made by the Board. A right to be considered for promotion cannot be deferred by the respondent Board for indefinite period. Such a valuable right deserves operation as soon as possible. In view of the Rules of 1963 the respondent Board must determine year wise vacancies from inception and to maintain the ratio of 1:1 among the direct recruits and promotees, as it is essential to regulate recruitment.

In view of whatever discussed above, this petition for writ deserves acceptance, hence the same is allowed. The respondent Board is directed to determine year wise vacancies in accordance with Rule 10 of the Rules of 1963 pertaining to the post of Driver from the day post of Driver became available to it and then to consider candidature of all the eligible Cleaners including the petitioner for promotion as driver against the vacancies pertaining to the promotion quota. Such consideration is required to be made from the day such Cleaners became eligible to be considered for promotion and on being found fit, promotion be given to them.

No order to costs.

(GOVIND MATHUR),J.

Kkm/ps.